

# ***2010 Data Protection Seminar***

***TMA Privacy Office***



## **Understanding the Nationwide Health Information Network and the Data Use and Reciprocal Support Agreement**



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## Understanding the NHIN and DURSA

# Purpose

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- Provide essential information on the Nationwide Health Information Network (NHIN) and the Data Use and Reciprocal Support Agreement (DURSA)
- Explain why DoD is employing this infrastructure for its electronic health records implementation



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## Understanding the NHIN and DURSA

# Objectives

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- Upon completion of this presentation, you should be able to:
  - Explain what the NHIN is and who can participate in it
  - Describe the DURSA and identify its purpose
  - Identify key privacy obligations of DURSA participants
  - Describe the NHIN governance structure and identify key policies
  - Explain DoD's objectives for the NHIN
  - Discuss privacy challenges arising from the NHIN exchange



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## Background to the NHIN

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- The NHIN is an integral part of our nation's health information technology (HIT) agenda
  - Supports and helps to execute Health Information Technology for Economic and Clinical Health (HITECH) Act goals, including “meaningful use” of HIT by health care providers and institutions
- The current NHIN model is in limited production, with use ramping up through federal contracts and grants
- NHIN is DoD's chosen vehicle to support Virtual Lifetime Electronic Records (VLER)



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## NHIN Model – A Network of Networks

*A confederation of trusted entities, bound by mission and governance to securely exchange health information*



- Participants facilitate information exchange with a broad set of users, systems, and geographies
- The Internet is the “backbone”
- The technology is based on a common implementation of standards and specifications with secure transport



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## The DURSA Underpins the NHIN

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- The DURSA is a multi-party trust agreement that provides the legal framework for information exchange across a broad range of public and private entities in the NHIN
  - All eligible entities wishing to exchange data across the NHIN must sign the DURSA
- The DURSA a living document that will be modified over time and in response to any relevant new laws



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## **Eliminating Point-to-Point Agreements**

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- The DURSA must accommodate a variety of participants
- Point-to-point agreements are:
  - Costly and inefficient
  - Not sustainable for information exchange as participation grows
- The DURSA is a multi-party agreement that avoids the need for point-to-points



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## Recent **DURSA** Milestones

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- June 2009 – Draft limited production DURSA submitted for federal clearance
- November 18, 2009 – Executable version of DURSA ready to sign
- January 29, 2010 – The Deputy Secretary of Defense executes the DURSA and DoD becomes a participant to the NHIN



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## Who is Eligible to Participate?

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- The NHIN seeks wide adoption and participation, within certain eligibility requirements
- NHIN participants must be:
  - A federal agency or
  - A valid legal entity, either public or private, that is a contractor, grantee or party to a cooperative agreement with a federal agency that addresses participation in the NHIN



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# Eligibility Requirements

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- NHIN applicants must also establish that they:
  - Are transacting health information electronically in production, and on a routine basis
  - Have the authority to enter into the DURSA and agree to its terms and conditions
  - Are able to request and/or receive information with other NHIN participants for a permitted purpose as set by NHIN governance
  - Have sufficient financial, technical, and operational resources to support the testing and operation of information exchange via the NHIN



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## The DURSA Trust Fabric

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- The DURSA requires parties to abide by a common set of terms and conditions that establish:
  - Participants' obligations
  - A trust fabric to support the privacy, confidentiality, and security of health data that is exchanged
- It assumes that each participant has trust relationships in place with its agents, employees, and data connections (end users, systems, data suppliers, networks, etc.)



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# Applicable Law

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- The DURSA reaffirms each participant's obligation to comply with *applicable law*:
  - For federal participants, this means applicable federal law
  - For non-federal participants, this means the law in the state(s) in which the participant operates and any applicable federal law



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## **HIPAA Privacy and Security Rules Apply**

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- To enable the exchange of health information in a manner that protects the privacy, confidentiality, and security of the data, the DURSA adopts the HIPAA Privacy and Security Rules as minimum requirements
- The DURSA is not a means to avoid HIPAA compliance—ON THE CONTRARY!



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## **DURSA Privacy and Security Obligations**

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- DURSA participants must continue to comply with existing Privacy and Security obligations under applicable law (e.g., HIPAA)
- DURSA participants that are not HIPAA covered entities, HIPAA business associates, or government agencies, are still obligated to comply with HIPAA Privacy and Security Rules as a “contractual standard of performance”



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## Data Requests via Permitted Purposes

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- End users may only request information through the NHIN for “permitted purposes.” These are:
  - Treatment
  - Payment
  - Limited health care operations with respect to the patient that is the subject of the data request
  - Specific public health activities
  - Quality reporting for “meaningful use”
  - Disclosures based on an authorization from the individual



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## **Other Duties & Obligations Under DURSA**

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- Recipient may retain, re-use, and re-disclose the data in accordance with applicable law and agreements
- Participants have a duty to respond to all requests for data for treatment purposes (even if actual data is not sent); DURSA does not require that a participant disclose data if such disclosure would violate applicable law
- Other duties with respect to requests and responses apply to ensure the privacy, confidentiality, and security of data



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## The “Minimum Necessary” Limit

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- Uses and disclosures of information are limited by the “need-to-know” standard
- Only the amount of information reasonably necessary to achieve the purpose of the use and/or disclosure is permitted



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## Uses of Data Received Through the NHIN

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- Once data is received, the recipient may incorporate that data into its records and retain that information in accordance with its own record retention policies and procedures
- The recipient can re-use and re-disclose that data in accordance with all applicable law and the agreements between a participant and its end users



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## Oversight and Ownership

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- The Department of Health and Human Services (HHS) has oversight authority
  - Office of National Coordinator (ONC) is charged with coordinating nationwide efforts to implement and use HIT and electronic exchange of health information
  - HHS Federal Health Architecture is owner/administrator of NHIN standards



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## Understanding the NHIN and DURSA

# Governance

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- The NHIN Technical Committee is responsible for determining priorities for the NHIN and creating and adopting specifications and test approaches
- The DURSA empowers a NHIN Coordinating Committee (CC) to oversee planning, consensus building, and consistent approaches to NHIN operations
  - Parties to the DURSA agree to comply with the NHIN CC policies



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## NHIN CC Responsibilities

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- The NHIN CC is responsible for:
  - Reviewing and validating applications to join the NHIN, with authority to accept or reject applications
  - Resolving disputes
  - Suspending and terminating NHIN participation
  - Overseeing NHIN operating policies and procedures
  - Informing the NHIN Technical Board when proposed changes for interface specifications impact participants
  - Coordinating and recommending proposed DURSA revisions
  - Implementing NHIN breach notification



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## How Do Participants Handle Breaches?

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- NHIN participants are required to:
  - Notify the NHIN CC and other impacted participants of suspected breaches (within 1 hour) or confirmed breaches (within 24 hours) that involve the unauthorized disclosure of data through the NHIN
  - Take steps to mitigate the breach
  - Implement corrective action plans to prevent such breaches from occurring in the future



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# How is the DURSA Amended?

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- Any member of the NHIN CC, participant, or member of the NHIN Cooperative may submit in writing to the NHIN CC a request for an amendment to the DURSA, together with justification
- The NHIN CC as a body may also solicit requests for amendments to the DURSA
  - For example, if new law is passed
- Parties to the DURSA are expected to sign the amendment, but have the choice of exiting the DURSA/NHIN if in disagreement



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## DoD's Participation in the NHIN

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- In April 2009, President Obama directed DoD and Veterans Affairs (VA) to implement a VLER system that:
  - will ultimately contain administrative and medical information from the day an individual enters military service throughout their military career, and after they leave the military*
- VLER capability is being realized using the NHIN
- For DoD, Personnel & Readiness has project ownership and oversight
  - VLER Interagency Program Office provides integrated project oversight and coordination



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## **VLER/NHIN Implementation**

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- Beginning August 2009 and continuing into 2011, pilots and proofs of concept will start exchanging limited data sets among DoD, VA, Kaiser Permanente, and other invited entities
- The VLER “end state” will be the secure availability and portability of patient-driven electronic exchange of standards-based health information, benefit information, and administrative information of Service Members and Veterans between VA and DoD, private providers, and other agencies

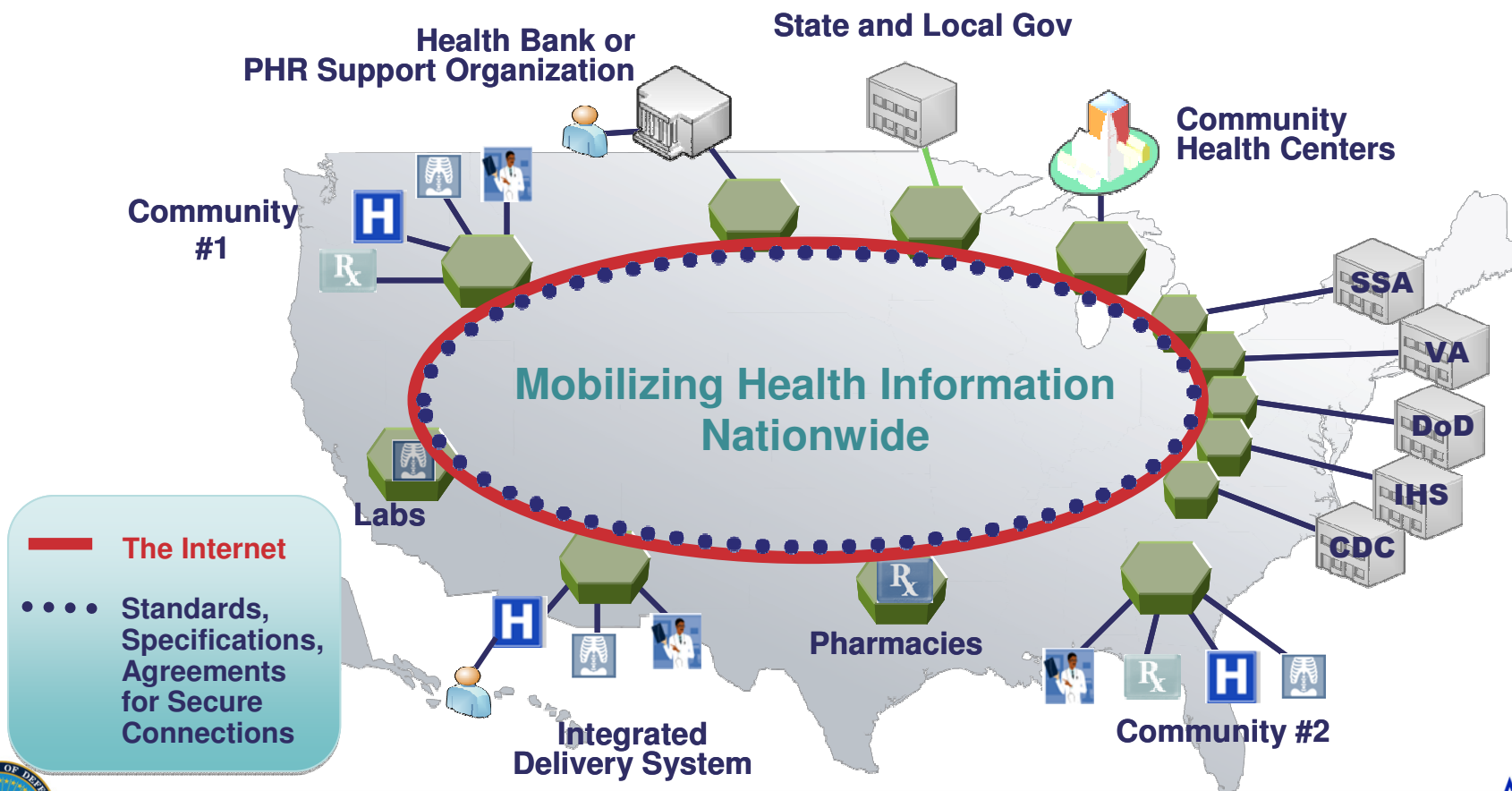


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## Tying it All Together



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## Privacy Issues

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- DoD and VA privacy advocates including TRICARE Management Activity Privacy Office are assessing impacts to privacy, such as:
  - Co-mingling of protected health information with data that holds different levels of protection
  - Desirability of offering “opt-in” consent in order to offset fears of new technology
  - Diverging local policies
    - For instance, how does the private care provider protect patient data that is received from DoD?
  - Challenge of meeting HIPAA and ARRA/HITECH accounting requirements for an enormous volume of disclosures to another entity all at once



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## Understanding the NHIN and DURSA

# Summary

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- You should now be able to:
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# Resources

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- The HHS Health IT home page is located at:  
<http://healthit.hhs.gov/portal/server.pt>
- Documents and latest information on the NHIN can be found at: [http://healthit.hhs.gov/portal/server.pt?open=512&objID=1142&parentname=CommunityPage&parentid=25&mode=2&in\\_hi\\_userid=11113&cached=true](http://healthit.hhs.gov/portal/server.pt?open=512&objID=1142&parentname=CommunityPage&parentid=25&mode=2&in_hi_userid=11113&cached=true)
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